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EXAMINER

NGUYEN, PHUONGCHI T

ART UNIT

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte PAUL REGEN, PETER GARRETT, and
EVERETT HALE

Appeal 2011-005180
Application 11/473,638
Technology Center 2800

Before JAMES C. HOUSEL, DONNA M. PRAISS, and
KRISTINA M. KALAN, *Administrative Patent Judges*.

KALAN, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

This is an appeal under 35 U.S.C. § 134 from the final rejection of claims 13, 15 and 17. We have jurisdiction under 35 U.S.C. § 6.

We AFFIRM.

Appellants'¹ claimed invention is an audio player including a wireless transmitter for transmitting audio data to a left earbud and a right earbud using short-range radio based transmissions. App. Br. 7. A Bluetooth transmitter transmits to left and right earpieces adapted to a pair of glasses such as sunglasses. In alternative embodiments the earpieces may be worn separately from the glasses, or may be associated with a hat or a cap. Spec. 11, ll. 1-9.

Claim 13 is representative:

13. An audio system comprising:
an audio player;
a wireless transmitter coupled to the audio player;
a left earbud; and
a right earbud;
wherein the audio player plays audio data, and the wireless transmitter transmits the data to the left earbud and to the right earbud, using short-range radio based transmissions.

App. Br., Claims App'x.

The Examiner relied on the following references in rejecting the appealed subject matter:

Swab	US 2002/0159023 A1	October 31, 2002
van Pelt et al.	US 2003/0073460 A1	April 17, 2003
Lai	US 2005/0159182 A1	July 21, 2005
Jannard et al.	US 7,004,582 B2	February 28, 2006

¹ Appellants identify the real party in interest in this appeal as Ennova Direct, Inc. Appellants' Brief (App. Br.) filed August 3, 2010, at 3.

The Examiner maintains, and Appellants appeal, the following rejections:²

1. Claims 13, 15 and 17 under 35 U.S.C. § 102(b) as being anticipated by Swab;
2. Claims 13, 15 and 17 under 35 U.S.C. § 102(e) as being anticipated by Jannard;
3. Claims 13, 15 and 17 under 35 U.S.C. § 102(b) as being anticipated by Van Pelt; and
4. Claims 13 and 17 under 35 U.S.C. § 102(e) as being anticipated by Lai.³

App. Br. 9.

ANALYSIS

Appellants argue all the dependent claims together with the independent claim. Accordingly, the dependent claims stand or fall with the independent claim. *See* 37 C.F.R. § 41.37(c)(1)(vii).

Under 35 U.S.C. § 102, “every element of the claimed invention must be identically shown in a single reference.” *In re Bond*, 910 F.2d 831, 832 (Fed. Cir. 1990).

The Examiner finds that (a) each and every element set forth in claims 13, 15 and 17 is found in Swab; (b) each and every element of Claims 13, 15

² The rejection of claim 17 under 35 U.S.C. § 112, second paragraph, stands withdrawn by the Examiner. Ans. 2.

³ In the Grounds of Rejection portion of the Answer, the Examiner states that all of the rejections are based on Section 102(b). However, the Final Office Action mailed March 12, 2010 and the remainder of the Answer maintain the rejections as noted above.

and 17 is found in Jannard; (c) each and every element set forth in claims 13, 15 and 17 is found in van Pelt; and (d) each and every element in claims 13 and 17 is found in Lai. App. Br. 4-6. In support of the Examiner's findings, diagrams contained in the Final Office Action mailed March 12, 2010 at 6-7 illustrate the topologies of the cited references against Appellants' claimed connections.

Appellants argue that the Examiner's construction of claim 13 is unreasonably broad:

The specification, drawings and claims of the present application **do not include** a single receiver that splits signals to a right and left earpiece as taught in Lai; transmitting to the left earpiece which forwards transmission to the right earpiece, via hardwire, as taught in Van Pelt; transmitting to an intermediate device, which transmits to another intermediate device, which then forwards transmission to the left earpiece which forwards transmission to the right earpiece, via hardwire, as taught in Swab and Jannard.

App. Br. 17. However, the proper analysis is not whether Appellants' specification, drawings, and claims include additional elements of the prior art references, but rather, whether the prior art references disclose each and every element of the Appellants' claims. *In re Crish*, 393 F.3d 1253, 1256 (Fed. Cir. 2004).

The Examiner correctly points out that the interconnections of Appellants' receiver (transceiver) and earbuds are not specified in the specification. Ans. 7. We agree with the Examiner that Appellants have

provided no actual evidence that it would be unreasonable to construe the claim language to include transceivers located in the frames of a pair of glasses as taught by Jannard, or in the temples of a pair of glasses as taught by Lai and Swab, or even

if the earbuds are connected by wires as taught by Swab or van Pelt.

Id.

Appellants further contend that “a reasonable interpretation of claim 13, in view of Fig. 6 and the accompanying specification, is that that the transmission occurs from the device 601 to the left earbud and that transmission occurs from the device 601 to the right earbud.” App. Br. 18. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. *In re Van Geuns*, 988 F.2d 1181, 1184 (Fed. Cir. 1993). As the Examiner points out, the specification “does not positively show where any of the individual transceiver[s] associated with the earpieces are located.” Ans. 7. Appellants do not dispute this finding. Therefore, we conclude the Examiner has provided the broadest reasonable interpretation of claim 13. *See In re Morris*, 127 F.3d 1048, 1055 (Fed. Cir. 1997) (case law permits the Examiner to give claims their broadest reasonable interpretation).

We have reviewed the Final Office Action and the Answer and find the Examiner provided detailed facts and reasons to put Appellants on notice of the specific teachings in Swab, Jannard, and van Pelt, that read on claims 13, 15 and 17, and the specific teachings in Lai that read on claims 13 and 17.⁴ Ans. 4-6. Appellants have not explained persuasively why the Examiner’s determination of anticipation is not supported by the evidence of

⁴ “[T]he PTO carries its procedural burden of establishing a prima facie case when its rejection satisfies 35 U.S.C. § 132, in ‘notify[ing] the applicant . . . together with such information and references as may be useful in judging of the propriety of continuing the prosecution of [the] application.’ 35 U.S.C. § 132.” *In re Jung*, 637 F.3d 1356, 1362 (Fed. Cir. 2011).

record under the broadest reasonable interpretation of the claims.

Appellants' arguments distinguishing the art of record are unpersuasive because they are not based on limitations that appear in the claims. *In re Self*, 671 F.2d 1344, 1348 (CCPA 1982).

In sum, upon thorough consideration of the record on appeal, and for the reasons expressed in the Answer and above, we find a preponderance of the evidence favors the Examiner's § 102 rejections of claims 13, 15 and 17. Therefore, we affirm the Examiner's decision to reject all of the claims.

DECISION

The Examiner's decision is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(v).

ORDER

AFFIRMED

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